Supreme Court, U.S.
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NO. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 2007

WILLIE J. HORTON, JR.

Petitioner,

v.

COMMISSION ON TEACHER CREDENTIALING, et. al.,

Defendant and Respondent.

On Petition for Writ of Certiorari
To the
Supreme Court
Of the United States
28 U.S.C. §1257(c)

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a California statute, the Administrative Procedure Act (APA) Govt. Code Section 11524 protects a citizen's due process rights and property rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution, Title VII Racial Discrimination Claims:

a. Where Congress has specified the remedies a party must exhaust as a jurisdictional prerequisite to judicial review of a class of agency actions; and

b. Where the administrative agency decided by rule to make an inter-agency review process mandatory?

2. Can an administrative agency violate a party's equal protection clause of the Fourteenth Amendment and Fifth Amendment to the United States Constitution by litigating the same party for the same cause of action:

a) where there has been a prior decision in favor of the Respondent (now Petitioner) and,

b) the agency had not requested reconsideration or an appeal by filing a petition for mandamus mandated by the California APA Govt. Code Section 11524?

3. Were Petitioner's constitutional rights violated according to due process clause and the equal protection clause of the Fifth and Fourteenth Amendments where:

a) the second administrative law judge did not have jurisdiction to rehear the same charges and issues under the same case number that the first administrative law judge dismissed between the parties; and

b) did the first administrative proceeding preclude racial discrimination claims protected under Title VII?

4. Whether a Superintendent of Schools can fire a Tenure Teacher, and then serve on the Commission on Teaching Credentialing that revoked his credentials after being terminated by the Superintendent, who was serving as a voting member of the Commission on Teaching Credentialing:

a) where Appellant filed a charge of discrimination on February 13, 2004 against the San Diego Unified School District;

b) where Appellant had successfully taught for another school district under contract for more than four years when the Commission on Teaching Credentialing retaliated and revoked his credentials;

c) was Appellant protected under §704(a) of Title VII, which makes it unlawful "for an employer to discriminate against any of their employees who have availed themselves of Title VII protection; and where the Superintendent was serving as a voting member of the Commission on Teaching Credentialing.

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PETITION FOR WRIT OF CERTIORARI

Willie J. Horton, Jr. respectfully petitions for a Writ of Certiorari to review the Judgment of the California Supreme Court and the Fourth District Court of Appeal Division One in this case.

OPINIONS BELOW

The decision of the California Supreme Court denying review (Appendix A). The decision of the California Supreme Court addressing the jurisdiction, and the anti-discrimination issues as it relates to the Administrative Procedure Act (APA) Govt. Code Section 11524; and Civil Rights Act of 1964 (42 USCA §2000e-3(a).

JURISDICTION ON CERITORARI

On September 12, 2007, the California Supreme Court denied review en banc petition for review of the Fourth District Court of Appeal, Division One. The jurisdiction of this court is invoked under 28 U.S.C. §1257(a). (Appendix A).

CONSTITUTIONAL AND SATUTORY PROVISONS INVOLVED

The Fifth Amendment due process clause, to life, liberty and the pursuit of happiness and the equal protection clause under the Fourteenth Amendment protects property rights.

1. The California FEHA's anti-retaliation provision makes it unlawful for an employer to "discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this [Act] or because the person has filed a complaint, testified or assisted in any proceeding under this [Act]." [Gov. Code, §12940, subd. (f)].

2. Petitioner is suing under (42 USCS § 2000e3(a) making it unlawful for employer to discriminate against employees who have availed themselves of Title VII of Civil Rights Act, has been held to include former employers.

LEGISLATIVE MATERIAL

APA California Gov. Code Section 11524 was revised in 1997 to incorporate the statutory judicial review decided by *Darby v. Cisneros* (1993) 509 U.S. 137; 113 S. Ct. 2539; 125 L. Ed. 2d. 113.

STATEMENT OF THE CASE

This retaliation discrimination and damages case began when the San Diego Unified School District (hereinafter "district) sent adverse information to the Commission on Teacher Credentialing (hereinafter "Commission") on July 29, 2003. The adverse information was dismissed by an administrative tribunal order on May 25, 2000. Petitioner unsuccessfully challenged the California Administrative Act (APA) Govt. Code Section 11524, the controlling statute of the first administrative order.

Petitioner alleged injury occurred while employed as a certificated teacher for the San Diego County Department of Education on November 6, 2004, when his four life-time

credentials were revoked by the Commission. He filed a complaint in the San Diego Superior Court. The trial court dismissed the California Administrative Procedure Act cause of action (jurisdiction), but initially sustained the discrimination cause of action. Later in the court proceedings the trial court erred in granting judgment in favor of defendants.

This case also has a direct employer's/employee's relationship to the Commission, because the Superintendent who terminated Petitioner as principal in the District was serving as a voting member of the Commission who revoked Petitioner's credentials three years and eight months after his termination from the District.

The first administrative order dismissed all charges against him in May 2000, and the District's motion for continuance was denied by the ALJ. The District did not appeal the ruling (see Appendix B).

1. Background

The first administrative order established legal rights to Petitioner and defendants are liable for not recognizing the first administrative order. Legal obligations are attached to the first administrative order. The highest state court erred in not addressing the first administrative order, and the Federal questions of law presented by Petitioner. (See *Board of Education v. Superior Court*, 448 U.S. 1343, 1345-46. 1980).

Petitioner is claiming that the Superintendent interfered with his teaching contract for the San Diego County Department of Education by serving as a voting member of the Commission during the time the adverse materials were sent to the Commission. The Superintendent was still serving as a voting member of the Commission when his four life-time credentials were revoked.

In *Robinson, Sr, v. Shell Oil Company*, a former employee brought action against his former employer,

claiming retaliatory discrimination in violation of Title VII of the Civil Rights Act of 1964.

This court granted certiorari, the Supreme Court, Justice Thomas, held that term "employees", as used in anti-retaliation provision of Title VII, includes former employer. The Superintendent of the District was Petitioner's former employer.

Petitioner's rights under the Federal constitution was prejudiced by the decision of the California Supreme Court refusal to "construe" a State Administrative Procedure Act statute and an anti-discrimination statute. Petitioner did not anticipate that the California State Supreme Court would sidestep the statutes and the Federal Questions of Law.

The rule that, when the decision of the highest state court may rest upon a non-federal ground adequate to support it, this court will not take jurisdiction to determine the federal questions, has no application where as, here, the non-federal ground might have been considered by the state

court but was not (see *International Steel Co. v. Surety Co.*, 297 U.S. 657, 662 (1936).

The Federal questions so clearly presented to the Commission barred the revoking of Petitioner's four life-time credentials because the adverse charges they relied on were dismissed in a previous administrative hearing (First Administrative Order).

Petitioner is bringing a claim under the Federal Equal Protection Clause because the state courts refused to correct an EGREGIOUS ERROR at the administrative agency.

Petitioner is alleging that the unequal treatment occurred as the result of governmental action. The courts have ruled that the doctrine applies to all branches of government, from federal agencies to local boards and commissions.

The basic point is that a law that is fair on its face, but which is applied unfairly, will violate the equal protection clause, just as if the law had been written with racial

animus. Equal protection of the law may be denied by a statute fair on its face and impartial in appearance if it is applied with an evil eye and an unequal hand. [See *Baluyut v. Superior Court*, 12 Cal. 4th 826, 50 Cal. Rptr. 2d 101, 911 (1996); *Murgia v. Municipal Court*, 15 Cal. 3rd 286, 124 Cal. Rptr. 204, 504 p. 2d 44, 90L.R.R.M. (BNA) 2803 (1975); *People v. Superior Court* (Hartway), 19 Cal. 3d 338, 138 Cal. Rptr. 66, 562 p. 2d 131, (1977)].

"Equal protection" is a shorthand phrase that emanates from the Fourteenth Amendment to the United States Constitution, which provides in part that: "No state shall ... deny to any person within its jurisdiction the equal protection of the laws, [n] or shall any state deny to any person within its jurisdiction the equal protection of the laws."

[U.S. Constitution, Amendment XIV]. Essentially, the concept of equal protection means that persons who are similarly situated should be treated the same way; there

should be no discrimination between them if there is no factual basis for differential treatment.

The right to equal protection is an individual right. (See *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, 3 A.L.R. 2d 441 (1948); *Castaneda v. Partida*, 430 U.S. 482, 97 S. Ct. 1272, 51 L. Ed. 2d 498 (1977); *Sweatt v. Painter*, 339 U.S. 629, 70 S. Ct. 848, 94 L. Ed. 1114 (1950).

The first administrative order contains substantial federal claims which were put before the California Supreme Court for review.

Petitioner is seeking review of the first administrative order because of its finality. (See *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507 (1950) and dissenting opinion at 516). The finality of a state court judgment is a jurisdictional requirement; any party can raise a finality issue at any stage of the proceedings in the Supreme Court. If the parties fail to identify or discuss a finality problem,

the court itself can raise and dispose of the matter at any juncture [see *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306 (1989)]. The court inquired into and resolved a finality problem "although the parties had not discussed it". Only after satisfying itself that the state court ruling was truly final did the court proceed to resolve the federal constitutional issues at stake.

After the ruling of the first administrative order, (APA) Govt. Code Section 11524(c) barred the District from re-filing the same dismissed charges. The second ALJ did not have the jurisdiction to grant continuance. Only the first ALJ had that authority: "When a hearing officer has been assigned to such a hearing, no continuance may be granted except by him for good cause shown." (Govt. Code Section 11524). Petitioner alleges constitutional and statutory claims against state officials who acted under color of state law, and violated federally protected rights. The administrative intra-agency review process was

mandatory by its established rule. District had to exhaust all remedies as a prerequisite for judicial review.

The Fourth District Court of Appeal Division One entered judgment for the Commission on Teacher Credentialing without addressing the jurisdictional question of APA Govt. Code Section 11524. Appendix B.

The California Supreme Court denied review without rendering an opinion. The Court refused to issue a certificate to Petitioner indicating that he raised federal question of law. The conflict raises an important question of law warranting this court's preliminary review.

STANDARD OF REVIEW

Court reviews agency interpretation of its statutory authority under the Chevron two-step inquiry:

1) Where Congress has directly spoken to the precise question at issue, court must give effect to the unambiguously expressed intent of Congress, reversing an agency's interpretation that does not conform to the

statute's plain meaning (see Chevron, *U.S.A. v. Natural Resources Defense*).

The California state courts disregarded the (APA) statute governing the first administrative order; (APA) Govt. Code Section 11524.

Petitioner raised the jurisdictional issue in the trial court. The trial court erred by dismissing the jurisdiction cause of action.

REASONS FOR GRANTING WRIT

1. The question presented by Petitioner is "an important one of first impression" under the statute (APA Govt. Code 11524). [(See *American Federation of Musicians v. Wittstein*, 379 U.S. 171, 175 (1964)].

2. The importance of the question presented to the California Supreme Court and affected individuals [See *Olmstead v. Zimning*; 527 U.S. 581, 596 (1999)].

3. The issue is important because the lower court decision not to address the statute is at war with a well-established construction given the statute by the administrative agency charged with its enforcement. [See *Albertsons Inc. v. Kirkingburg*, 527 .S. 555, 561-62 (1999)].

4. The issue is important because it involves the validity of agency regulations under the statutes pursuant to which they were promulgated.

5. The disregard of the rule of law of the California State Court impact the validity of similar (APA) statutes in other states. The statute in question involves the construction and application of acts of Congress. There is a federal counterpart to the statute.

6. The Superintendent who terminated Petitioner on October 25, 2000 from the District simultaneously served on the Commission as a voting member. The term "employees," as used in §704(a), includes former

employees, Petitioner can bring suit against his former employer (Superintendent) for post-employment actions. Petitioner filed a complaint with the EEOC. [See *Robinson, Sr. v. Shell Oil Company*, 519 U.S. 337, 136 L.Ed. 2d 808, 117 S. Ct. 843 (1997)].

The revocation of Petitioner's four life-time credentials occurred more than four years after his termination from the District at the recommendation of the Superintendent; therefore, §704(a) applies to the dispute between Petitioner and the Superintendent who was also a voting member of the Commission that revoked his credentials. This act occurred after the employment relationship ended between Petitioner and the Superintendent. The Commission/ Superintendent interfered with Petitioner's teaching contract, retirement benefits, and medical benefits. Petitioner had successfully taught for another district for more than four years.

Petitioner filed several EEOC complaints against the District and Superintendent as the main person of interest after receiving threats of post-employment retaliation. (See Appendix D). The last complaint was filed several days after Petitioner called the Superintendent office, and politely asked him to please follow District procedures in the closing of his former high school. Two days later Petitioner received a letter from Commission saying he was under investigation to see if he was fit to teach.

The long and short of it is that the decision plainly collides with this court's interpretation of the key constitutional foundation of discriminatory application of the law, and review should be granted for that reason alone. The errors are so palpable; moreover that Petitioner suggests this is one of those exceptional cases in which summary reversal would be in order. The issues are not one that will benefit by further consideration by lower courts.

CONCLUSION

The decision collides so squarely with this court's decisions and threatens such mischief that review should be granted, with summary reversal an appropriate disposition. If, on the other hand, there might be basis for such a differentiating certiorari should be granted for plenary review of these questions, which would surely be an important one. "Where an administrative forum has the essential procedural characteristics of a court, its determinations should be accorded the same finality that is accorded the judgment of a court. The importance of bringing a legal controversy to conclusion is generally no less when the tribunal is an administrative tribunal than when it is a court."

Respectfully submitted,

Willie J. Horton

Date: 12/10/07 Willie J. Horton, Jr., Pro Se

Filed June 21, 2007

Court of Appeal, Fourth Appellate District, Division One, State of California

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Teacher Credentialing – Defendant and Respondent

D048473

(Super. Ct. No. GIC841793)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Hayes, Judge. Affirmed.

Willie Horton, Jr., appeals from a judgment rendered in an action in which he challenged the revocation of his teaching credentials by the Commission on Teacher Credentialing (Commission). The trial court sustained a demurrer in the Commission's favor, except for a racial

discrimination claim, because Horton failed to exhaust administrative remedies. Thereafter, the court granted summary judgment in the Commission's favor on the racial discrimination claim. We conclude the trial court's rulings were correct, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND[1]

Overview

Prior to the revocation of his teaching credentials, Horton was terminated by the San Diego Unified School District (District) for misconduct. He unsuccessfully sought to overturn his termination in administrative and judicial proceedings, including an appeal before this court.

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[1] Horton filed a motion to augment the record and a request for judicial notice. We grant his unopposed motion to augment with exhibits presented to the trial court. We grant his unopposed request for judicial notice to the extent it pertains to documents reflecting official acts of public agencies, and deny it as to documents from nonpublic entities. (See 1 Witkin, Cal. Evidence (4th ed. 2000) Judicial Notice, § 19, pp. 113-114).

After the proceedings challenging the termination were completed, a committee of the Commission investigated the matter and recommended that his teaching credentials be revoked. He failed to request an administrative hearing to review this recommendation, and the recommendation was adopted by the Commission without a hearing. Representing himself, he then sought judicial review of the revocation of his credentials in superior court. Because of his failure to exhaust his administrative remedies, the superior court sustained a demurrer as to all claims except the racial discrimination claim. The court thereafter granted summary judgment on the racial discrimination claim. To review Horton's challenges, we summarize the proceedings leading up to the credentials revocation, and the subsequent action in the superior court.

Horton's Termination from the District

Horton was a principal at a District alternative high school. In 2000, the District placed him on unpaid

administrative leave and initiated termination proceedings based on allegations of "immoral conduct, dishonesty, evidence of unfitness to teach and persistent violations and refusal to obey reasonable regulations prescribed by the Board." Horton requested a hearing before the Commission on Professional Competence (CPC). In February 2000 a five-day hearing was held before this body. Approximately 26 witnesses testified and approximately 75 exhibits were introduced at the hearing. In March 2001, the CPC upheld the District's dismissal and issued a 27-page decision explaining the basis for its decision that Horton should be dismissed.[2]

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[2] Summarizing its decision, the CPC concluded Horton should be dismissed because he "appropriated funds donated for the benefit of his students and diverted some of them for his own use, he used funds mandated to be used to purchase instructional materials to purchase merchandise which was redeemed by students for their personal use, and he failed to promptly provide students with instructional materials in his possession"; his misconduct continued through the dismissal proceedings as "he went to . . . great

lengths to cover up his misconduct"; and he was "reluctan[t] to admit any impropriety, other than being a sloppy bookkeeper" which made "the likelihood of further misconduct[] substantial."

Horton challenged the termination by filing a petition for writ of mandate with the superior court, an appeal before this court, and a petition for review before the California Supreme Court. The superior court determined the agency's findings were supported by the weight of the evidence. On appeal, we rejected Horton's various arguments challenging the termination. (*Horton v. San Diego Unified School District* (March 10, 2003) D039749 [nonpub. opn.]) On July 16, 2003, the California Supreme Court denied Horton's petition for review.

Revocation of Horton's Teaching Credentials

In a letter dated July 24, 2003, the District notified the Commission that it had received the California Supreme Court's denial of review of Horton's termination case. By letter dated February 11, 2004, the Commission notified

Horton that because it had received information that he had been dismissed based on allegations of misconduct, it was commencing a preliminary investigation of his fitness to hold a credential. The letter stated that Horton could provide a written response within 30 days of the date of the letter, and explained that typical information submitted for consideration could include a letter explaining the facts and circumstances surrounding the misconduct, recent letters of recommendation, and recent work evaluations. The letter stated all available information would be considered by the Commission's Committee of Credentials (Credentials Committee), and that at that time the Credentials Committee would either close the investigation or schedule the matter for additional review.

Horton sent several letters to the Commission stating his views that his termination had been illegal and in violation of his due process and civil rights. He also sent favorable letters of recommendation written on his behalf

for purposes of his application to work at another school district.

On February 19, 2004, Horton filed a racial discrimination charge with the Equal Employment Opportunity Commission (EEOC), alleging that the Commission's investigation was retaliatory and commenced because of his race. On April 19, 2004, the EEOC sent Horton a right-to-sue letter because it could not investigate the charge and did not intend to file a lawsuit within the required time period.

In Jun 2004, Commission investigator Gayle Fukushima prepared an investigative report summarizing the background information leading to Horton's dismissal from the District and the CPC's decision upholding the termination, and setting forth circumstances in mitigation and aggravation. At its June 2004 meeting, the Credentials Committee found probable cause to recommend revocation of Horton's teaching credentials. The Credentials

Committee prepared a statement of its findings, in which it summarized the contents of the CPC's termination decision and noted that Horton had been unsuccessful in overturning the termination decision before the superior and appellate courts.

By letter dated July 2, 2004, the Commission notified Horton that the Credentials Committee had found probable cause to recommend revocation of his teaching credentials and sent him a copy of the Credentials Committee's findings. The letter informed Horton that he could seek review of the Credentials Committee's recommendation within 30 days of the date of mailing of the letter through two options: (1) send a written request for reconsideration containing new and relevant information not previously reviewed by the Credentials Committee, or (2) send a written request for an administrative hearing before an administrative law judge. The letter stated that if he elected an administrative hearing, it would be held before an

administrative law judge, and that the disciplinary action imposed following the administrative hearing could be greater or lesser than the action recommended by the Credentials Committee. Further, the letter advised Horton that if he did not elect one or both of these options, the Credentials Committee's recommendation would be adopted by the Commission without further proceedings.

Horton did not request reconsideration or an administrative hearing to review the Credentials Committee's recommendation. In a letter dated October 7, 2004, the Commission informed Horton that it had revoked his credentials effective November 6, 2004.

Superior Court Proceedings

February 2005 Pleading

In February 2005, Horton filed a pleading in superior court challenging the Commission's revocation of his

credentials.[3] He identified the claims as lack of jurisdiction, due process violation, interference with property interest in employment as a teacher, and racial discrimination. Horton alleged that on February 11, 2004, he called District Superintendent Alan Bersin and asked him to follow District procedures in the closing of the alternative high school where Horton had been principal. The next day, he received a letter from the Commission dated February 11, 2004, informing him that the Commission was investigating his fitness to hold a credential. He alleged Bersin was a member of the Commission; the District turned over erroneous information about him to the Commission; and the District and the Commission conspired to revoke his credentials

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[3] The pleading was denominated "First Amended Complaint . . . "Declaratory Relief or Injunctive Relief. Ultimately a Writ of Mandate. § 1094.5."

after he called Bersin regarding the need to follow procedures for the closing of schools. He alleged that when the Commission commenced its investigation in February 2004, he had been successfully teaching in juvenile court schools for four years. When his teaching credentials were revoked by the Commission in November 2004, he lost this teaching position. He also alleged that the Commission violated his rights by relying on the District's improper termination of him.

On March 18, 2005, the Commission filed a demurrer alleging that Horton had failed to exhaust his administrative remedies. The Commission asserted that Horton had been advised of his right to administrative review, but failed to exercise his right to an administrative hearing.

On April 8, 2005, Horton filed an opposition to the demurrer, contending that he should be excused from exhausting his administrative remedies.

On May 11, 2005, the trial court denied the demurrer as to Horton's racial discrimination claim, and granted the demurrer for the remaining causes of action with leave to amend to allege facts showing exhaustion of his administrative remedies would have been futile.

May 2005 Pleading & Demurrer

In May 2005, Horton filed an amended pleading. Regarding exhaustion of administrative remedies, he alleged a request for reconsideration would have been futile because District Superintendent Bersin, who had authorized his termination from the District, was a member of the Commission. Further, he alleged pursuit of an administrative hearing would have resulted in irreparable harm because his credentials would have been revoked

pending the outcome of the hearing and it would have taken about two years to have an administrative hearing.

On June 17, 2005, the Commission filed a demurrer to the May 2005 pleading, alleging that Horton's failure to exhaust his administrative remedies should not be excused and that the pleading failed to state a viable claim for racial discrimination. The Commission argued that Horton's claim that he would not have received a fair hearing because Superintendent Bersin was a member of the Commission was speculative, and his claim of irreparable harm was unavailing because his credentials would not have been revoked pending an administrative hearing. Regarding his racial discrimination claim, the Commission argued this claim was not viable because Horton was not an employee of the Commission; rather, the Commission was merely the licensing entity responsible for issuing teacher credentials and disciplining credential holders.

On July 27, 2005, the trial court ruled that Horton had not and could not allege facts showing exhaustion of his administrative remedies would have been futile or caused irreparable harm. Accordingly, the court sustained the demurrer without leave to amend, except as to the racial discrimination claim. The court rejected the Commission's request for a demurrer on the racial discrimination claim based on its assertion there was no employer-employee relationship because the Commission had not raised this issue in its demurrer to the February 2005 pleading.

Summary Judgment Motion

On October 28, 2005, the Commission moved for summary judgment on the remaining racial discrimination claim. The Commission argued that Horton had failed to present a viable claim for racial discrimination because (1) there was no employer-employee relationship between Horton and the Commission, and (2) there was no prima facie case of racial discrimination. Regarding the latter

contention, the Commission asserted that Horton had not alleged any facts showing discrimination, and the evidence showed the Commission revoked his credentials based solely on the misconduct that lead to his dismissal from the District.

To support its position, the Commission provided the various legal decisions upholding the District's termination (including the CPC's decision and our appellate court opinion) and submitted declarations from District attorney Jose Gonzales and Commission Director Mary Armstrong. Attorney Gonzales declared that Horton was dismissed by the District because of his misfeasance with school monies, not because of his race. Commission Director Armstrong declared that in July 2003 the Commission received information from the District regarding Horton's dismissal; the Commission commenced an investigation into Horton's fitness to hold a credential; as a result of the investigation the Commission found probable cause to recommend

revocation of Horton's credentials; and after Horton failed to request an administrative hearing the Commission's recommendation became final in November 2004. Armstrong declared that the Commission's decision to revoke Horton's credentials was based solely on his misconduct, and his race was not a factor in its decision.

Horton filed an opposition to the Commission's summary judgment motion, as well as his own "summary adjudication" motion on the racial discrimination claim. Regarding the issue of an employment relationship with the Commission, he asserted a direct employment relationship was not necessary if the defendant exercised sufficient power over the plaintiff's employment opportunities.

Regarding evidence of discrimination, Horton delineated various factors that he contended showed racial discrimination. He asserted that the District waited several years before contacting the Commission; District Superintendent Bersin was serving on the Commission; and

Horton was notified of the Commission's commencement of an investigation after he complained to Bersin about following procedures for closing schools. He contended that the timing between his telephone call to Bersin and the Commission's commencement of its investigation supported an inference of racial discrimination. Further, he asserted he provided the Commission with information about procedural improprieties and racial discrimination during the termination process, and with information showing he was a competent teacher. He argued the Commission investigator failed to disclose this information to the Commission; the Commission ignored these documents and merely "rubber stamped" the District's decision to terminate him; and the Commission conspired with Bersin to revoke his credentials.

Horton further argued that his alleged misfeasance with school funds was not connected to his responsibilities as a teacher; he had successfully taught for more than four

years at the juvenile hall school when the Credentials Committee recommended revocation of his credentials; and no disciplinary action should have been taken by the Commission. He argued there was a prima facie case of racial discrimination because he is African-American, no other employees were reprimanded or terminated as a result of alleged misappropriations of funds, and he was the only administrator terminated by Superintendent Bersin's administration because he had filed previous discrimination complaints against the District.

To support his arguments, Horton submitted several documents that he stated he provided to the Commission during its investigation. One document was a May 2002 declaration from attorney Clifton Blevins. Attorney Blevins declared that he was familiar with the facts of Horton's termination case, and that the District had used tactics in Horton's case that showed he was treated differently than White employees accused of similar rule

violations. Attorney Blevins also declared that the percentage of African-American administrative employees who suffered adverse employment actions was inordinately high compared to the percentage of such employees in the overall staff and that this trend began with Superintendent Bersin's administration. Another document consisted of an April 2002 letter of recommendation from the principal of the juvenile hall school where Horton had been employed after his termination from the District, which described his exemplary teaching performance.[4]

On February 21, 2006, the trial court granted the Commission's summary judgment motion and denied Horton's "summary adjudication" motion. The trial court ruled summary judgment in the Commission's favor was proper because Horton had failed to file a separate statement of material facts and declaration authenticating the evidence he provided in support of his motion and his opposition to the Commissioner's summary judgment

[4] The letter stated that Horton had been teaching at the Sarah Anthony School in juvenile hall; that his teaching performance had "surpassed all expectations in every respect"; and he was a "very experienced administrator and . . . highly skilled as a hands on teacher."

motion. Additionally, the court ruled than even if Horton had filed the required documents, summary judgment in the Commissioner's favor was warranted because there was no employer-employee relationship with the Commission and no prima facie case of racial discrimination.

DISCUSSION

In this appeal, Horton reiterates many of the arguments he presented to the trial court.[5] Noting the delay in the District's report of his dismissal to the Commission and the close timing between his telephone

[5] In his opening brief on appeal, Horton sets forth several arguments that he did not present to the trial court; we decline to review them. (*Saville v. Sierra College*

(2005) 133 Cal.App.4th 857, 872-873 [party may not change theory on appeal].} Additionally, for the first time in his reply brief, Horton presents arguments in reliance upon a wrongful termination action he apparently filed in superior court; we also decline to address this issue. (See *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 [issues raised for first time in reply brief are waived].)

call to Bersin and the commencement of the Commission's investigation, he argues there is a triable issue of fact whether the Commission's action constituted retaliation for his call to Bersin. He further contends that Commission Investigator Fukushima's report concealed information that after his termination he had successfully taught for more than four years at another school district. Challenging the procedural fairness of the proceedings, he argues Bersin had a conflict of interest and there are triable issues of fact

whether Bersin conspired with Fukushima to conceal information; whether Bersin improperly influenced the Commission's decision; and whether the Commission merely "rubber-stamped" the Credential Committee's retaliatory recommendation.[6] Additionally, attacking the substantive merits of the Commission's decision, he asserts that he was charged with misconduct as a principal, not as a teacher; the charges had nothing to do with his fitness to teach; he was rated as a superb teacher for four years; and no credible evidence supported an inference of his unfitness to teach. Relying on the above assertions, as well as a claim that Bersin had a history of discriminating against

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[6] In his brief on appeal, Horton contends Bersin was a "voting member" of the Commission's "committee." In his pleading before the trial court, he alleged Bersin was appointed as a member of the Commission in 2000, that he served as chairman of the Credentials Committee in 2002, and that he was reappointed in 2002 for another term on the Commission. During the summary judgment proceedings

pertaining to the racial discrimination claim, no facts were presented regarding Bersin's status during any of the relevant time periods in 2004 (i.e., when the Credentials Committee initiated its investigation, when the Credentials Committee recommended revocation, and when the Commission approved the revocation). Further, no facts were presented indicating that Bersin participated in the revocation decision. Additionally, because Horton did not pursue his administrative remedies, these factual issues were not developed in the administrative forum.

African-Americans, Horton contends there are triable issues of fact regarding his racial discrimination claim.[7]

Horton's arguments call into question both the trial court's demurrer ruling and summary judgment ruling.[8] Horton fails, however, to present any argument on the issue of exhaustion of remedies. As we shall explain, we

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[7] In his brief on appeal, Horton also asserts there is a triable issue of facts whether the Commission revoked his credentials because he filed racial discrimination charges with the EEOC in response to the Commission's commencement of its investigation. The record does not show he presented this argument to the trial court; accordingly, we will not consider it for the first time on

appeal. (*Saville v. Sierra College, supra*, 133 Cal.App.4th at pp. 872-873).

8 It was not entirely clear from Horton's opening brief whether he was challenging the demurrer in addition to the summary judgment, and the Attorney General apparently interpreted his appeal as only addressing the summary judgment. We address both rulings, and conclude Horton's challenges fail as to both.

conclude that because Horton failed to address the exhaustion requirement, he cannot prevail on a challenge to the demurrer ruling. We also hold the Commission carried its burden to show there was no prima facie evidence of racial discrimination so as to warrant summary judgment.

Demurrer

The trial court sustained the demurrer as to all claims except the racial discrimination claim based on a finding that Horton could not pursue a judicial challenge to the Commission's decision because he failed to exhaust his administrative remedies and he could not allege facts excusing him from this requirement.

When reviewing the sustaining of a demurrer, we exercise our independent judgment to determine whether the complaint states a cause of action as a matter of law. (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 834.) We assume the complaint's properly pleaded or implied factual allegations are true, and also consider judicially noticeable matters. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320 (*Campbell*).) Generally, a party must obtain a decision from the final administrative decision maker before seeking judicial relief. (*Id.* at p. 321; *Coachella Valley Mosquito & Vector Control Dist. V. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080; *Richards v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 304, 315 (*Richards*).) The exhaustion requirement is designed to reduce litigation, facilitate the development of a complete factual record, and allow the agency to apply its expertise. (*Richards, supra*, 139

Cal.App.4th at p. 315; *Coachella Valley, supra*, 35 Cal.4th at p. 1080).

Here, the Education Code allows a teacher to request an adjudicatory hearing pursuant to the provisions of the Administrative Procedure Act to challenge a credentials committee's recommendation of adverse action. (Ed. Code, §§ 44244.1, subd. (a)(1); 44242.5, subd. (c)(3)(B); see *California Teachers Assn. V. California Com. On Teacher Credentialing* (2003) 111 Cal.App.4th 1001, 1007). Under the Administrative Procedures Act, after an administrative law judge (ALJ) hears the case at the administrative hearing, he or she prepares a proposed decision. (Gov. Code, § 11517, subd. (c)(1).) The agency (i.e., the Commission) may then adopt or change the proposed decision, reject the proposed decision and refer the case back to the ALJ for additional evidence, or reject the proposed decision and decide the case itself with or without additional evidence and after giving the parties an

opportunity for oral or written argument. (Gov. Code, §11517, subds. (c)(2)(A)-(E).) Once the agency's decision is final, it may be judicially reviewed through a petition for writ of mandate under Code of Civil Procedure section 1094.5. (Gov. Code, § 11523; see *Gupta v. Stanford University* (2004) 124 Cal.App.4th 407, 411.)

When Horton received the Credentials Committee's recommendation to revoke his credentials, he was notified that he had the right to request an administrative hearing before an ALJ. According to the letter sent to Horton, the Credential Committee's findings resulted in a *recommendation* for revocation, and Horton had the opportunity to seek administrative review *before* the actual revocation of his credentials. Under the exhaustion rule, Horton was required to pursue this administrative remedy before seeking judicial review. If an administrative hearing, followed by Commission review of the ALJ's proposed decision, had occurred, Horton could have

objected if he believed any persons with conflicts were participating in the decision, and he could have raised his various concerns about the fairness of the Commission's investigation as well as his substantive challenges to the revocation recommendation.[9] If he did not prevail before the ALJ or the Commission, he could have then sought judicial review of the final administrative decision by a petition for write of mandate. Because Horton did not pursue relief in the administrative forum, he failed to develop a record that would have facilitated judicial review, which is one of the key purposes of the exhaustion of administrative remedies rule.

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[9] We note that the allegations in this case do not constitute a challenge to the procedural fairness of the structure of the Commission's administrative procedures. (Compare *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 168, 172-178 [when administrative

remedy itself violates due process, plaintiff need not exhaust administrative remedies].) Rather, Horton alleges the Commission's handling of his particular case was unfair, a matter that could have been explored during an administrative hearing. (See *Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515, 519, 522-523 [exhaustion requirement not excused merely because of claim that the administrative hearing was being conducted unfairly].)

Although there are exceptions to the exhaustion requirements (see *Campbell, supra*, 35 Cal.4th at p. 322; *Richards, supra*, 139 Cal.App.4th at p. 316), in his briefing on appeal Horton has not presented any argument that an exception applies here; indeed, he entirely fails to discuss the issue of exhaustion of administrative remedies. Issues not missed in an appellant's brief are deemed waived or abandoned. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Because Horton has not addressed the exhaustion issue in his appellate briefs, he has abandoned his claim that he should be excused from the exhaustion requirement. Absent a showing that an exception to the

exhaustion requirement applies, the trial court properly sustained the demurrer because Horton failed to exhaust his administrative remedies.

Summary Judgment

We review the trial court's granting of summary judgment de novo, considering all of the evidence presented by the parties except evidence properly excluded by the trial court. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)[10] The "party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if this burden is met, the burden of production shifts to the opposing party to make a prima facie showing of a triable issue of material fact (*Ibid.*) We view the

evidence in the light most favorable to the opposing party, liberally

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[10] The Attorney General does not dispute the trial court's ruling that the racial discrimination claim was not barred by Horton's failure to exhaust administrative remedies. We assume for purposes of our analysis that the ruling is correct.

construing the opposing party's evidentiary showing while strictly scrutinizing the moving party's showing. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

To pursue a discrimination claim, the plaintiff has the initial burden to show a prima facie case of discrimination. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354.) The plaintiff must show "'"actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a [prohibited] discriminatory criterion....'"'" (*Id.* At p. 355, original brackets.)

Generally, there must be "some...circumstances that suggests discriminatory motive." (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1038 (*Cucuzza*).)

In summary judgment proceedings, a defendant charged with discrimination may meet its burden by showing the plaintiff cannot establish a prima facie case of discrimination. (See *Cucuzza, supra,* 104 Cal.App.4th at p. 1038.) If the defendant presents evidence of a legitimate, nondiscriminatory reason for its conduct, the plaintiff must then present evidence that can support an inference of discriminatory motive. (See *Guz v. Bechtel National, Inc., supra,* 24 Cal.4th at pp. 357-358; *Cucuzza, supra,* 104 Cal.App.4th at p. 1038; *Kelly v. Stamps.com Inc.* (2005) 135 Cal.App.4th 1088, 1097-1098,1101.) "'[S]peculation cannot be regarded as substantial responsive evidence.'" (*Cucuzza, supra*, 104 Cal.App.4th at p. 1038, original brackets.) Rather, the plaintiff must set forth specific facts demonstrating the falsity of the defendant's proffered

legitimate reasons so that a reasonable fact finder could rationally find them unworthy of credence. (*Ibid.*)

Here, the Commission presented evidence showing there had been prior adjudications that Horton engaged in misconduct warranting dismissal, and that the Commission relied on these adjudications, not his race, when revoking his credential. Horton did not present any facts that could reasonably support a contrary inference that the Commission was motivated by his race to revoke his credentials. However, Horton has not presented any facts showing he provided the Commission with information showing he was terminated for racial reasons rather than for misconduct. Attorney Blevin's declaration claiming that racially discriminatory tactics had been used in Horton's termination case, and that Bersin's administration had discriminated against African-Americans in its personnel actions, was premised on conclusory statements with no supporting factual information. No facts were

presented to rebut the Commission's showing of its nondiscriminatory motive derived from its reliance on the adjudicated findings of misconduct. Given our conclusion that the Commission carried its burden to show no triable issue of fact on racial discrimination, we need not address the issue.

The demurrer and the summary judgment were properly granted. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed. Parties to bear their own costs on appeal.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P.J.

O'ROURKE, J.

Filed July 12, 2007

Court of Appeal, Fourth Appellate District, Division One,

State of California

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Teacher Credentialing – Defendant and

Respondent

D048473

(Super. Ct. No. GIC841793)

ORDER DENYING PETITION FOR REHEARING AND MOTION TO AGUMENT ON APPEAL

THE COURT:

Appellant's petition for rehearing and motion to augment record on appeal are denied.

HUFFMAN, Acting P.J.

Copies to: All parties

Filed September 12, 2007

Court of Appeal, Fourth Appellate District, Division One, State of California – In The Supreme Court of California

En Banc

Willie Horton, Jr. – Plaintiff and Appellant

v.

Commission on Teacher Credentialing – Defendant and Respondent

D048473

(Super. Ct. No. GIC841793)

The petition for review is denied.

Frederick K. Ohlrich, Clerk

_____

Deputy

GEORGE

_____

Chief Justice

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

San Diego County Superior Court – Main
P.O. Box 120128
San Diego, CA 92112

RE: WILLIE HORTON, JR.
Plaintiff and Appellant,
v.
COMMISSION ON TEACHER CREDENTIALING,
Defendant and Respondent,
D048473
San Diego County No. GIC841793

*** * * REMITTITUR * * ***

I, Stephen M. Kelly, Clerk of the Court of Appeal of the Sate of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on June 21, 2007, and that this opinion or decision has now become final.

X - Other (See Below)
Parties to bear their own costs on appeal.

Witness my hand and the seal of the Court affixed this September 17, 2007.

STEPHEN M. KELLY
By: _____
* Deputy Clerk *

cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)

State of California
Department of General Services
Gray Davis, Governor
INTERAGENCY SUPPORT DIVISION
OFFICE OF ADMINSITRATIVE HEARINGS

FAX TRANSMITTAL INFORMATION PAGE

SAN DIEGO

DATE: May 25, 2000

TO: JANICE P. BROWN, ESQ.

FAX NO. 858-646-3091
LAW OFFICE OF JAMES GATTEY,
FAX NO. 619-234-4553

FROM: OAH

NO. OF PAGES: (Including This Page) -5-

MESSAGE: NOTICE OF RULING RE WILLIE HORTON, OAH NO. I.2000030303

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
SAN DIEGO UNIFIED SCHOOL DISTRICT
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

In the Matter of the Dismissal of:

WILLIE HORTON, Respondent.

OAH No. L2000030303

NOTICE OF RULING ON MOTION

On May 22, 2000 Respondent Willie Horton's Motion to Dismiss was heard.

Respondent, and moving party, Horton was present and represented by Patrick T. Cooney, Attorney at Law, from the Law Offices of James M. Gattey.

The San Diego Unified School District was represented by Joanne Sawyer-Knoll, Office of the General Counsel, San Diego Unified School District and Janice P. Brown, Esq. From Vantage Law Group LLP.

On May 1, 2000 Horton filed a MOTION TO DISMISS THE ACCUSATION FOR FAILURE TO COMMENCE HEARING WITHIN 60 DAYS OF EMPLOYEE'S REQUEST FOR A HEARING AS MANDATED BY EDUCATION CODE SECTION 44944. The Motion (and is attached Exhibits 1-5) was marked for identification as Respondent's Exhibit A.

On May 15, 2000, the District filed SAN DIEGO UNIFIED SCHOOL DISTRICT'S OPPOSITION TO THE MOTION TO DISMISS AND MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF A CONTINUANCE OF PROCEEDINGS. The Opposition (and declarations of Stella L. Neuman and Janice P. Brown) was marked as Complainant's Exhibit 1.

On May 9, 2000, Horton filed HORTON'S REPLY MEMORANDUM TO DISTRICT'S OPPOSITION TO THE MOTION TO DISMISS AND OPPOSITION TO DISTRICT'S MOTION FOR A CONTINUANCE OF

THE PROCEEDINGS. The Reply Memorandum was marked for identification as Respondent's Exhibit B.

At the conclusion of oral argument on May 22, 2000, both parties were given the opportunity to file further argument on the Motion until the close of business on May 23, 2000.

On May 23, 2000, Horton filed by fax transmission HORTON'S SUPPLEMENTAL AUTHORITIES REGARDING WHETHER THE ADMNISTRATIVE TRIBUNAL MAY ISSUE AN ORDER NUNC TUNC. This was marked for identification as Respondent's Exhibit C.

The parties' positions are amply stated in the papers filed. Horton claims that the District failed to provide him with a hearing within 60 days of his demand for hearing pursuant to Education Code section 44944 and that this failure constitutes a jurisdictional defect that cannot be remedied. The District claims alternatively, 1) that the

actual date of the request for hearing is April 3, 2000 and not February 28, 2000, and that the hearing will commence within the statutory time since it is set to begin on June 1, 2000; and 2) that the Office of Administrative Hearings has the authority to grant a continuance of the hearing and that such a grant of a continuance under Education Code section 44944(a), would extend the time for the commencement of the hearing.

When the arguments are reduced to their essence, the issue is quite straightforward. Under the facts of this case, does the District's failure to provide Horton with a hearing within 60 days of his request for hearing constitute a jurisdictional defect that cannot be remedied?

Although the District argues otherwise, the operative date on which Horton requested a hearing is February 28, and the Education Code required that the District afford him a hearing on the charges within 60 days. The 60th day

from Horton's February 28, 2000 request for a hearing was April 28, 2000.

Willie Horton is a permanent classified and certificated employee of the District and is currently assigned as principal of the District's alternative school, Youth Opportunity Unlimited.

On February 1, 2000 the District served Horton, pursuant to Education Code section 44934, with Dismissal Charges alleging that cause existed to dismiss Horton from his employment as a principal. Horton requested a hearing on February 28, 2000. On March 21, 2000, Horton was mailed a Notice of Case Setting from the Office of Administrative Hearings setting the case for hearing on June 1st and 2nd. On March 29, 2000, Horton's attorney received an Accusation from the District and on April 3, 2000 Horton's attorney filed a Notice of Defense.

A foundational premise of the administrative process is the belief that the public interest is best served by a process that is speedy and efficient and not burdened by too many technical rules. That is why the rules of evidence are generally relaxed and there are far fewer technical defenses available. The notion is that in matters that are colored with the public interest (and occupational licensing clearly meets this standard) hearings on the merits are the preferred method of resolving disputes.

In a sense, this is what the District argues. The District claims the charges against Horton are very serious and, because of this, the public interest requires that a hearing on the merits be conducted. Further, the District argues that the Office of Administrative Hearings (OAH) has the power to fashion relief that will insure that this matter be heard on the merits.

Although all courts have certain powers inherent in their nature, each court has enumerated powers that flow from the constitution or from legislation. These enumerated powers determine the scope of a court's authority to act. The District argues that OAH has the power to grant a continuance of the hearing nunc pro tunc to a date within the original 60 day window thus extending the time to commence the hearing. This is a most interesting argument but one which vests power in this Court that is beyond its jurisdiction.

There are three cases that must be read in conjunction with Education Code section 44944. They are 1) *Governing Board of the Palos Verdes Peninsula Unified School District v. Felt* (1976) 55 Cal.App.3d, 156, 2) *Powers v. Commission on Professional Competence* (1984) 157 Cal.App.3d 560, and 3) *Wilmot v. Commission on Professional Competence* (1998) 64 Cal.App.4th 1130.

Education Code section 44944(a) reads in relevant part:

> In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing.

None of the cases cited either directly or by implication allow this administrative tribunal to cure this fatal procedural defect. These case do stand for the proposition that the term "shall be commenced" in Education Code section 44944(a) is mandatory. Further, the parties, according to these cases, have the power, should they jointly feel the need for more than 60 days to prepare for hearing, to extend the time by stipulating that the necessary ceremonial of opening the record has been observed. Also, if a continuance is granted pursuant to Government Code section 11524, the time to commence

the hearing shall be extended for a period equal to such continuance.

Here, no such action took place during the critical 60 day period. There was no waiver by the parties; there was no stipulations; there was no opening of the record to satisfy the jurisdictional requirement of Section 44944.

The District's attorney chose the trial date of June 1 and 2 to satisfy the calendaring needs of the attorney. That is clear from the Declaration of Janice Brown, Esq. And paralegal Stella Neuman.

The District's Motion for Continuance cannot be granted when it is made for the first time after the expiration of the 60 day period within which to commence the hearing. This administrative tribunal has no such power to revive that which has been extinguished by granting a Motion for Continuance Nunc Pro Tunc.

The Education Code is clear with respect to the mandatory, not permissive, requirement to commence such a hearing within 60 days of respondent's request. The cases that interpret and explain the meaning of the statute are, likewise, clear. There is no room for doubt.

By granting the relief requested by the District, the Administrative Law Judge (ALJ) would be turning the Education Code on its head and in effect, rewriting it. All courts and judges have some discretion to interpret the laws. However, an ALJ at this level of judicial review does not have discretion to rewrite the Education Code and create a new and novel way to avoid the clear and unambiguous language of Education Code section 44944.

The Motion to Dismiss filed by respondent Horton is granted. The District's Motion for Continuance is denied.

IT IS SO ORDERED.

Dated: May 25, 2000

STEPHEN E. HJELT, ALJ
Office of Administrative Hearings

SAN DIEGO CITY SCHOOLS
EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-2682
(619) 725-8080
(619) 543-1357 – FAX

May 31, 2000

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Mr. Willie J. Horton, Jr.
15661 El Camino Entrada
Poway, CA 92064-2157

Dear Mr. Horton:

The purpose of this letter is to advise you that you will continue on administrative leave with pay irrespective of the May 25, 2000 ruling of Stephen E. Hjelt, Administrative Law Judge. You are reminded that you are not to be on any San Diego Unified School District campus or any District facility.

If you have any questions, please feel free to contact my office at 619-725-8006.

Sincerely,

Deberie L. Gomez
Deputy Administrative Officer

DLG:rag
C: T. Smith, J. Sawyerknoll, J. Brown
Personnel Records

U.S. Department of Justice
Civil Rights Division
NOTICE OF RIGHT TO SUE WITHIN 90 DAYS
950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4239
Washington, DC 20530
April 19, 2004

CERTIFIED MAIL
5059 5050

Mr. Willie J. Horton, Jr.
15661 El Camino Entrada
Poway, CA 92064

Re: EEOC Charge Against San Diego Unified School District, et al.
No. 345200400582

Dear Mr. Horton, Jr.:

Because you filed the above charge with the Equal Employment Opportunity Commission, and the Commission has determined that it will not be able to investigate and conciliate that charge within 180 days of the date the Commission assumed jurisdiction over the charge and the Department has determined that it will not file any lawsuit(s) based thereon within that time, and

because you have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice. If you cannot afford or are unable to retain an attorney to represent you, the Court may, at its discretion, assist you in obtaining an attorney. If you plan to ask the Court to help you find an attorney, you must make this request of the Court in the form and manner it requires. Your request to the Court should be made well before the end of the time period mentioned above. A request for representation does not relieve you of the obligation to file suit within this 90-day period.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

R. Alexander Acosta
Assistant Attorney General
Civil Rights Division

By

Karen L. Ferguson
Civil Rights Analyst
Employment Litigation Section

cc: San Diego Area Office, EEOC
San Diego Unified School District, et al.

CHARGE OF DISCRIMINATION

Charge Presented To: EEOC

Agency(ies) Charge No(s): 345-2004-00582

Name: Mr. Willie Horton

Home Phone No.: (858) 679-3787

Date of Birth: 03-30-1942

Street Address: 15661 El Camino Entrada,

Poway, CA 92064

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others.

Name: SAN DIEGO Unified School District

No. Employees, Members: 500 or More

Phone No.: (619) 2893-8686

Street Address: 4100 Normal Street, San Diego, CA 92103

Discrimination Based On: Race and Retaliation

Date(s) Discrimination Took Place: 02-13-04

The particulars are:

I. a) On February 13, 2004, I received a letter, dated February 11, 2004, wherein I was informed that: "The California Commission on Teacher Credentialing (Commission) is in receipt of information requiring a preliminary investigation of your fitness to hold a credential."

b) This "retaliatory" investigation may preclude any future "rehiring" prospects with the District.

II. I believe I was discriminated against because of my race, Black, and in retaliation for having previously filed an earlier Charge(s) of Discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, and in

violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended.

Received: February 19, 2004 EFOC/LADO SDAO

I declare under penalty of perjury that the above is true and correct.

Date: February 19, 2004

Charging Party Signature: Willie J. Horton

COMPLAINT OF DISCRIMINATION UNDER

THE PROVISIONS OF THE CALIFORNIA

FAIR EMPLOYMENT AND HOUSING ACT

CALIFORNIA DEPARTMENT OF FAIR

EMPLOYMENT AND HOUSING

Name: Mr. Willie J. Horton, Jr.

Telephone Number: (619) 263-2776

Address: 1898 Ballina Street

City/State/Zip: San Diego, CA 92114

NAMED IS THE EMPLOYER, PERSON,

ORGANIZATION, EMPLOYMENT AGENCY,

APPRENTICESHIP COMMITTEE, OR SATE OR

LOCAL GOVERNMENT AGENCY WHO

DISCRIMINATED AGAINST ME:

Name: California Commission on Teaching Credentialing

Address: 1900 Capitol Avenue

City/Sate/Zip: Sacramento, California 95814-4213

The particulars are:

On November 6, 2004 I was denied employment and revoked my credentials by Janet Vining – Senior Staff Counsel because of my: sex, age, race/color, and retaliation for filing.

The reason given by Janet Vining – recommendation by the Credentials Commission.

Was because of (please state what you believe to be reasons): Janet Vining did not state a clear reason. Superintendent of Schools Alan Bersin is a real party of interest in a pending legal matter and he also serves on the Committee.

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a

complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated: November 12, 04

At: San Diego

Complainant's Signature: Willie J. Horton, Jr.

Date Filed: 11/12/04